

Notice of Allowability

Application No.

10/039,837

Examiner

FRANCES P. OROPEZA

Applicant(s)

GREENBERG ET AL.

Art Unit

3766

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/28/2008 (Amendment).
2. ☒ The allowed claim(s) is/are 269-302.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 7/27/07.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 9/18/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 2/10/2008
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

ALLOWANCE

EXAMINER'S AMENDMENT

1. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to the Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview between Scott B. Dunbar and Frances P. Oropeza on 2/14/2008.

The application has been amended as follows:

In claim 297, line 8, after "stimulation" the following has been inserted --of--.

Reasons for Allowance

2. Claims 269-302 are allowed. The following is an Examiner's statement of reasons for allowance: The subject matter of the independent claims could either not be found or was not suggested in the prior art. The subject matter not found was a visual prosthesis comprising:

- a means for altering parameters for stimulation of visual neurons based on said operational data, or
- a means for altering parameters for stimulating visual neurons based on said operational data, or
- a means for altering parameters for stimulating the retina based on said operational data, or

a method of restoring vision in a patient with impaired vision comprising the steps of altering parameters for stimulation of visual neurons based on said operational data, in combination with the other elements of the claims. Two pieces of prior art, considered to be the best prior having similar disclosures to the Applicant's instant invention, are discussed below.

U. S. Patent No. 6,458,157 to Suaning discloses a retinal stimulator system with components internal and external to the body. Suaning provides bilateral communications between the internal and external devices, but the system does not provide a means for altering parameters for stimulation of the visual neurons / neurons of the retina based on the operational data, the stimulation of the neurons being based on the parameters of amplitude and duration and the operational data transmitted being voltage at the input of the constant current sink and the power supply voltage (abstract; Figure 3; col. 1 @ 29-41; col. 11 @ 8-24).

U.S Patent No. 5,935,155 to Humayun et al. discloses a visual prosthesis that stimulates retinal tissue based on a visual image and the resulting visual signal output. The radio frequency transmission is passed from the extra-ocular components to the intra-ocular components, hence the system does not provide a means for altering parameters for stimulation of the visual neurons / neurons of the retina based on the operational data (abstract; Figures 1-2; col. 4 @ 36-62).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Drawings

2. The proposed drawing correction of Figures 4 and 5, filed on 1/28/2008, has been accepted.

The application having been allowed, formal drawings of all Figures including Figures 4 and 5 with the labeled rectangular boxes, is required in response to this Office action to avoid abandonment of the application. The correction to the drawing will not be held in abeyance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. Fran's schedule typically is Monday and Tuesday 9AM-7PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl. H. Layno can be reached on (571) 272-4949. Carl's schedule typically is Monday, Wednesday, Friday 9AM-5 PM EST; Tuesday, Thursday 9AM-3PM and 9PM-11PM EST. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frances P. Oropeza/

Patent Examiner, Art Unit 3766

/Carl H. Layno/

Supervisory Patent Examiner, Art Unit 3766